

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REVISIONS TO RULES PROHIBITING UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS SERVICE [199 IAC 22]	DOCKET NO. RMU-04-9
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ORDER ADOPTING AMENDMENTS

(Issued January 26, 2005)

Pursuant to Iowa Code §§ 17A.4, 476.1, 476.2, and 476.103, the Utilities Board (Board) adopts the amendments attached hereto and incorporated by reference. The amendments are to the Board's subrule 199 IAC 22.23(2) which prohibits a telecommunications service provider from changing a customer's service provider without customer authorization of the change. This proceeding has been identified as Docket No. RMU-04-9.

Currently, carriers acquiring the customers of another carrier by means of sale or transfer of assets must first obtain from the Board a waiver of the customer authorization requirement. The Board has regularly granted such waivers. The amendments create a self-certification procedure to be used by carriers in lieu of seeking a waiver of the customer authorization requirement when they acquire new customers from another carrier through a sale or asset transfer. The new procedure requires advance notice of the transfer to the Board and to affected customers. The amendments also remove the list of examples of appropriate verification data in subparagraphs 22.23(2)"a"(3) – (5). In the notice of proposed rule making, the Board

proposed to delete the phrase "social security number" from the list of examples. This left only one item, "customer's date of birth," in the list. Having only one example may give the appearance of unduly restricting the verification options, so in the adopted rules the Board has stricken the list of examples altogether.

On December 22, 2004, the Board published a "Notice of Intended Action" in the Iowa Administrative Bulletin containing the proposed amendments, see IAB Vol. XXVII, No. 13 (12/22/2004) p. 891, ARC 3900B. No oral presentation was scheduled or requested.

Written comments addressing the proposed amendments were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and Local Telephone Data Services Corporation (LTDS). Consumer Advocate supported the proposed amendments and requested that language be added to require the acquiring carrier to certify that three copies of the letter of notification filed with the Board and any subsequent filing notifying the Board of material changes to the required information have been served on Consumer Advocate. The Board recognizes Consumer Advocate's concern that it be served with these notices and has considered the suggested language. However, because paragraph 1.8(4)"c" already requires service of three copies on Consumer Advocate of any material filed with the Board, the Board concludes it is not necessary to add another service requirement to the amended rule. The Board also notes that the issue of proper service on Consumer Advocate is likely to be addressed in the anticipated revision of the Board's procedural rules.

LTDS proposed several additional amendments for the stated purpose of clarifying 199 IAC 22 and making it more responsive to modern practices. LTDS's

proposals relate to web-based and electronically-filed letters of agency and the ability of local exchange carriers to port a customer's telephone number to a Voice over Internet Protocol service provider. The Board has considered these proposals and concludes they are well beyond the scope of the rules governing carrier-to-carrier transfers of customers proposed in its "Notice of Intended Action" and, therefore, will not adopt the amendments proposed by LTDS. LTDS may wish to consider petitioning the Board for a separate rule making proceeding to specifically address concerns about modernizing 199 IAC 22.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-04-9, is adopted.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an "Adopted and Filed" notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 26th day of January, 2005.

UTILITIES DIVISION [199]

Adopted and filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, and 476.103, the Utilities Board (Board) gives notice that on January 26, 2005, the Board issued an order in Docket No. RMU-04-9, In re: Revisions to Rules Prohibiting Unauthorized Changes in Telecommunications Service [199 IAC 22], "Order Adopting Amendments." The order adopted amendments, with certain revisions, which were published under Notice of Intended Action in IAB Vol. XXVII, No. 13 (12/22/2004) p. 891, as ARC 3900B.

The amendments are made to current subrule 199 IAC 22.23(2) which prohibits a telecommunications service provider from submitting a carrier change order to another service provider without customer authorization of the change. The Board routinely grants waivers of this requirement in cases where a carrier acquires customers from another carrier by sale or asset transfer. The amendments create a procedure by which the acquiring carrier must certify to the Board in advance of the transfer that it will comply with the new requirements, which include advance notice to the Board and affected customers.

The amendments also remove the list of examples of appropriate data to be used to verify customer authorization of changes in telecommunications service. In the notice of proposed rule making, the Board proposed to delete the phrase "social security number" from the list of examples. This left only one item, "customer's date

of birth," in the list. Having only one example may give the appearance of unduly restricting the verification options, so in Items 2 – 4 of the adopted rules the Board has stricken the list of examples altogether.

Written comments were filed by the Consumer Advocate Division of the Department of Justice and Local Telephone Data Services Corporation. The comments did not result in any changes to the amendments. The Board's order adopting the amendments can be found on the Board's Web site, www.state.ia.us/iub.

The amendments will become effective March 23, 2005.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, and 476.103.

The following amendments are adopted.

Item 1. Amend subrule 22.23(1), definition of "slamming" as follows:

"Slamming" means the designation of a new provider of a telecommunications service to a customer, including the initial selection of a service provider, without the verified consent of the customer. "Slamming" does not include the designation of a new provider of a telecommunications service to a customer made pursuant to the sale or transfer of another carrier's customer base, provided that the designation meets the requirements of 199 IAC 22.23(2)"e."

Item 2. Amend subparagraph 22.23(2)"a"(3) as follows:

(3) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data ~~(e.g., the customer's date of birth or social security number)~~.

The independent third party must not be owned, managed, controlled, or directed by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier change; or

Item 3. Amend numbered paragraph 22.23(2)"d"(4)"2," second and third bulleted paragraphs, as follows:

- The local exchange carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the preferred service provider freeze is to be imposed, to impose a preferred service provider freeze. The electronic authorization shall confirm appropriate verification data ~~(e.g., the customer's date of birth or social security number)~~ and the information required in 22.23(2)"d"(4)"3." Service providers electing to confirm preferred service provider freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the preferred service provider freeze request, including automatically recording the originating automatic numbering identification; or
- An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred service provider freeze and confirmed the appropriate verification data ~~(e.g., the customer's date of birth or social security number)~~ and the information required in 22.23(2)"d"(4)"3." The independent third party must not

be owned, managed, or directly controlled by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred service provider freeze requests for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred service provider freeze.

Item 4. Amend numbered paragraph 22.23(2)"d"(5)"2" as follows:

2. A local exchange service provider administering a preferred service provider freeze must accept a customer's oral authorization stating the intention to lift a preferred carrier freeze and must offer a mechanism that allows a submitting service provider to conduct a three-way conference call with the service provider administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a preferred service provider freeze, the service provider administering the freeze shall confirm appropriate verification data ~~(e.g., the customer's date of birth or social security number)~~ and the customer's intent to lift the particular freeze.

Item 5. Amend subrule 22.23(2) by adopting **new** paragraph "e" as follows:

e. Procedures in the event of sale or transfer of customer base. A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's customer base without obtaining each customer's authorization in accordance with 199 IAC 22.23(2)"a," provided that the acquiring carrier complies with the following procedures. A telecommunications carrier may not use these

procedures for any fraudulent purpose, including any attempt to avoid liability for violations under 199 IAC 22.23(2)"a."

(1) No later than 30 days before the planned transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the board a letter notifying the board of the transfer and providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected customers, and the date of the transfer of the customer base to the acquiring carrier. In the letter, the acquiring carrier also shall certify compliance with the requirement to provide advance customer notice in accordance with 199 IAC 22.23(2)"e"(3) and with the obligations specified in that notice. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected customers.

(2) If, subsequent to the filing of the letter of notification with the board required by 199 IAC 22.23(2)"e"(1), any material changes to the required information develop, the acquiring carrier shall file written notification of these changes with the board no more than 10 days after the transfer date announced in the prior notification. The board may require the acquiring carrier to send an additional notice to the affected customers regarding such material changes.

(3) Not later than 30 days before the transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected customer. The acquiring carrier must fulfill the obligations set forth in the written notice. The written notice must inform the customer of the following:

1. The date on which the acquiring carrier will become the customer's new provider of telecommunications service;
2. The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the customer's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the customer of any change(s) to these rates, terms, and conditions;
3. The acquiring carrier will be responsible for any carrier change charges associated with the transfer;
4. The customer's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available;
5. All customers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the customers must contact their local service providers to arrange a new freeze;
6. Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier; and
7. The toll-free customer service telephone number of the acquiring carrier.

January 26, 2005

/s/ Diane Munns

Diane Munns
Chairman